

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

KATRINA MCEWEN, Plaintiff, -vs- NCO FINANCIAL SYSTEMS, INC., Defendant.	<i>Civil Action No.</i> _____
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COMPLAINT & DEMAND FOR JURY TRIAL

INTRODUCTION

1. Plaintiff Katrina McEwen brings this action for actual and statutory damages resulting from the Defendant's various violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (hereinafter "FDCPA"), a law that prohibits debt collectors from using abusive, deceptive, and unfair practices in an attempt to collect a debt.

JURISDICTION & VENUE

2. This honorable Court possesses jurisdiction over this matter pursuant to 15 U.S.C. §1692k(d) and 28 U.S.C. § 1331.
3. Additionally, venue in this district arises pursuant to 28 U.S.C. §1391(b) since the Defendant transacts business here and the conduct complained of occurred here.

PARTIES

4. Plaintiff McEwen is a natural person residing in the County of Monroe, State of New York, and is a "consumer" as that term is defined by 15 U.S.C. §1692a(3).
5. Defendant NCO Financial Systems, Inc., (hereinafter "NCO Financial" or "NCO") is a foreign business corporation organized and existing under the laws of the State of Pennsylvania and is a "debt collector" as that term is defined by 15 U.S.C. §1692a(6).
6. Any and all acts of the Defendant hereinafter alleged were performed by Defendant's employees, while under the scope of the Defendant's actual or apparent authority.
7. Any and all references to "Defendant" herein shall include the Defendant and/or an employee of the Defendant.

FACTUAL ALLEGATIONS

8. That Plaintiff Katrina McEwen is alleged to have incurred and later defaulted on a debt to HSBC. Said alleged debt will hereinafter be referred to as “the subject debt.”
9. The subject debt is a “debt” as that term is defined by 15 U.S.C. §1692a(5), as it allegedly arose out of a transaction in which money, services or property, which was the subject of the transaction, was primarily for personal, family and/or household purposes.
10. That upon information and belief, Defendant NCO Financial was employed by HSBC following Plaintiff McEwen’s alleged default, in order to collect payment on the subject debt.
11. That upon information and belief, Defendant NCO Financial began placing repeated and continuous telephone calls to Plaintiff McEwen’s telephone shortly thereafter in an attempt to collect the subject debt.
12. That Defendant NCO Financial routinely caused Plaintiff McEwen’s telephone to ring, upwards to three or four times daily.
13. That Plaintiff McEwen knows that it was Defendant NCO Financial calling, because her telephone’s caller ID would show the Defendant’s company name whenever they called.
14. That said repeated and continuous telephone calls were very annoying to Plaintiff McEwen and caused her great frustration and distress.
15. That in or about August of 2010, Plaintiff McEwen received a telephone call from Defendant NCO and spoke with a representative who identified himself as “Kolash,” (*proper spelling unknown*). During the course of the telephone conversation that ensued, Defendant was extremely rude and nasty with Plaintiff, using very condescending and judgmental tones with her, and making statements to the effect:
 - a. That Plaintiff McEwen wouldn’t settle the debt anyway, because paying her bills doesn’t matter to her;
 - b. That Plaintiff should just go get a job;
 - c. That Plaintiff should just have her husband pay her bills; and
 - d. That Plaintiff must not understand English.
16. That Plaintiff Katrina McEwen felt very disrespected and insulted by Defendant’s statements and tones, and became very upset as a result.
17. That Defendant NCO has continued to call Plaintiff McEwen on a repeated and continuous basis to collect the subject debt, though Plaintiff refuses to answer the telephone as she is afraid to again be engaged in the same manner as described in Paragraph 15 above.

18. That as a result of Defendant's repeated and continuous telephone calls and otherwise rude and insulting behavior, Plaintiff McEwen became extremely frustrated, annoyed, aggravated and otherwise suffered from emotional distress.

CAUSE OF ACTION

19. The aforementioned acts and omissions of the Defendant have violated the Fair Debt Collection Practices Act (15 U.S.C. §1692 et seq.) as follows:
20. Defendant violated 15 U.S.C. §1692d, 15 U.S.C. §1692d(2) and 15 U.S.C. §1692f by using language the natural consequence of which was to abuse the hearer, by using very rude, condescending and nasty tones with her and otherwise telling Plaintiff that:
- a. She wouldn't settle the debt anyway, because paying her bills doesn't matter to her;
 - b. She should just go get a job;
 - c. She should just have her husband pay her bills; and
 - d. She must not understand English.
21. Defendant violated 15 U.S.C. §1692d and 15 U.S.C. §1692d(5) by repeatedly and continuously causing Plaintiff's telephone to ring, often times up to three or four times daily for several months with the intent to annoy, abuse and harass her.
22. Because of the Defendant's various aforementioned violations of the FDCPA, Plaintiff became frustrated, upset, annoyed and otherwise suffered from emotional distress.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff McEwen respectfully requests that this honorable Court enter judgment against the Defendant for:

- (a) Actual damages, pursuant to 15 U.S.C. §1692k(a)(1);
- (b) Statutory damages of \$1,000.00, pursuant to 15 U.S.C. §1692k(a)(2)(A);
- (c) Costs and disbursements of this action, together with reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3); *and*
- (d) For any and all additional relief as this honorable Court may deem just and proper.

JURY DEMAND

Please take notice that Plaintiff Katrina McEwen demands a trial by jury in this action.

Date: September 16, 2010

/s/ Frank J. Borgese
Frank J. Borgese, Esq.
Graham Law, P.C.
Attorneys for the Plaintiff
1207 Delaware Ave., Suite 202
Buffalo, New York 14209
fborgese@grahamlawpc.com
716.200.1520